

Message Text

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ACTION EA-14

INFO OCT-01 ISO-00 CIAE-00 PM-07 H-03 INR-10 L-03 NSAE-00

NSC-10 PA-04 RSC-01 PRS-01 SPC-03 SS-20 USIA-15

SAM-01 OMB-01 AID-20 JUSE-00 SIL-01 LAB-06 EB-11

COME-00 TRSE-00 HEW-08 AGR-20 HUD-02 DRC-01 /163 W

----- 030263

R 141015Z FEB 74

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC 632

INFO AMCONSUL CHIANG MAI

AMCONSUL UDORN

AMCONSUL SONGKHLA

AMEMBASSY PHNOM PENH

AMEMBASSY RANGOON

AMEMBASSY SAIGON

AMEMBASSY VIENTIANE

CINCPAC

DIA

USSAG NAKHON PHANOM

13TH ADVON UDORN

C O N F I D E N T I A L SECTION 1 OF 2 BANGKOK 2540

E.O. 11652: GDS

TAGS: PGOV, TH

SUBJECT: CONCEPTS IN THE THAI DRAFT CONSTITUTION

REF: A. BANGKOK 18192 OF 21 NOVEMBER 1973

B. BANGKOK 19286 OF 13 DECEMBER 1973

C. RTB 19363

SUMMARY: A PRELIMINARY REVIEW OF THE THAI DRAFT CONSTITUTION UNDERLINES ITS PARENTAGE IN THE 1949 CONSTITUTION. THERE IS ALSO A FLAVOR OF THE 1968 DOCUMENT. SIGNIFICANT PROVISIONS ALLOW THE KING MORE DISCRETION IN HIRING AND FIRING HIS ADVISERS. AN
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ENTIRELY NEW PROVISION ALLOWS THE KING TO SEND LEGIS-

LATION TO THE PEOPLE IN THE FORM OF A REFERENDUM. WOVEN THROUGHOUT THE DOCUMENT ARE VARIOUS COUNTER-BALANCES AGAINST PARLIAMENTARIANS. THE SENATE IS MUCH STRONGER THAN IN THE 1949 VERSION, AND MAY EVEN INITIATE LEGISLATION. THERE ARE VARIOUS PRODS TO INCREASE GOVERNMENT ATTENTION TO SOCIAL PROBLEMS AND WHOLE NEW CHAPTERS ON LOCAL ADMINISTRATION, THE NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT BOARD (NESDB), AND AN ADMINISTRATIVE COURT SYSTEM.

1. THE CONSTITUTION DRAFTING COMMITTEE (CDC), AFTER THREE MONTHS OF DELIBERATION (REF A AND B), HAS FILLED ITS MANDATE. THE CDC SENT THE DRAFT CONSTITUTION TO THE CABINET WHICH MADE A FEW CHANGES DURING ITS FEBRUARY 11 MEETING. THE DRAFT NOW GOES TO THE NATIONAL LEGISLATIVE ASSEMBLY. THE REMARKS BELOW ARE BASED ON AN ENGLISH TRANSLATION OF THE DOCUMENT (REF C).

ROYAL PRIVILEGES

2. THE DRAFT CONSTITUTION INCREASES BOTH THE STAFFING OF AND THE KING'S CONTROL OVER HIS ADVISERS. THE MAXIMUM NUMBER OF PRIVY COUNSELORS INCREASES FROM THE PRESENT 9 TO 15. UNLIKE THE 1949 OR 1968 DOCUMENTS, THE KING HAS THE UNRESTRICTED RIGHT TO APPOINT OR DISMISS PRIVY COUNCIL MEMBERS.

3. THE DRAFT GIVES THE KING THE POWER UNDER SECTION 91 TO REFER TO THE PEOPLE IN A NATIONAL REFERENDUM A MEASURE THAT THE NATIONAL LEGISLATIVE ASSEMBLY (NLA) HAS PASSED, BUT WHICH THE KING DISAPPROVES. SECTION 90, HOWEVER, RETAINS THE PROVISION IN THE 1949 AND 1968 CONSTITUTIONS ALLOWING THE NLA TO OVERRIDE THE KING'S UNWILLINGNESS TO PROMULGATE A BILL. SECTION 24 OF THE DRAFT CONSTITUTION ALLOWED THE NLA TO AMEND THE 1924 PALACE LAW ON SUCCESSION. IN ITS FEBRUARY 11 DELIBERATIONS ON THE DRAFT, THE CABINET REMOVED THAT PROVISION AND RETAINED THE WORDING IN THE 1949 DOCUMENT THAT THE SUCCESSION LAW CANNOT BE CHANGED.

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LEGAL PROTECTIONS AND SOCIAL WELFARE PROVISIONS

4. CHAPTER 3 OF THE DRAFT CONSTITUTION INCORPORATES NEW PROVISIONS DIRECTED TOWARD INHIBITING GOVERNMENT ARBITRARINESS AND POLITICAL PERSECUTION. SECTION 33 REQUIRES A "SWIFT INVESTIGATION AND TRIAL," AND PROVIDES PUBLIC DEFENDERS FOR THE POOR. SECTION 34 PROVIDES THAT AN INDIVIDUAL CANNOT TESTIFY AGAINST

HIMSELF. SECTION 35 ALLOWS A PERSON WHO HAS SUBSEQUENTLY BEEN JUDGED NOT GUILTY TO RECEIVE DAMAGES.

5. THE CDC HAS WRITTEN PROVISIONS INTO THE NEW DRAFT TO ENCOURAGE THE GOVERNMENT TO EMBARK UPON NEW SOCIAL LEGISLATION. THE EMINENT DOMAIN PROVISIONS OF SECTION 38 HAVE BEEN EXPANDED TO INCLUDE EXPROPRIATION "FOR THE INTEREST OF TOWN AND COUNTRY PLANNING." TO ENCOURAGE A REVISION OF THE NATION'S MARRIAGE LAWS, THE NEW CONSTITUTION INCLUDES THE PHRASEOLOGY IN SECTION 48 THAT THE "PARTNERS TO A MARRIAGE ARE EQUAL". SECTIONS 72, 73 AND 74 GIVE THE GOVERNMENT A NEWLY DEFINED RESPONSIBILITY TO PROTECT THE NATION'S NATURAL RESOURCES. SIMILARLY, SECTIONS 75 THROUGH 78 ATTEMPT TO ENCOURAGE THE GOVERNMENT TO DEAL WITH PROBLEMS OF LAND OWNERSHIP AND AGRICULTURAL PROMOTION. THE GOVERNMENT IS SPECIFICALLY CHARGED WITH SUPPORTING AGRICULTURAL COOPERATIVES. IN THE INTEREST OF THE GROWING URBAN AND INDUSTRIAL POPULATION, SECTIONS 82 THROUGH 84 CHARGE THE GOVERNMENT WITH PROMOTING EMPLOYMENT AND HOUSING. THE DRAFT CONSTITUTION GIVES THE GOVERNMENT A STRONGER MANDATE TO PROVIDE FREE MEDICAL CARE TO THE POOR (SECTION 85) AND PROMOTE EDUCATION (SECTIONS 67 THROUGH 68).

PARLIAMENT

6. THE DRAFT CONSTITUTION'S DICAMERAL LEGISLATURE PROVIDES FOR AN APPOINTED SENATE. THE PRIVY COUNCIL LISTS 300 NOMINEES FROM WHICH THE LOWER HOUSE SELECTS 100 NAMES. THIS HAND CHOSEN SENATE HAS SIGNIFICANTLY INCREASED POWERS. AS OPPOSED TO THE 1949 CONSTITUTION, THE NEW SENATE CAN INTRODUCE BILLS (SECTION 145), INTERPELLATE MINISTERS (SECTION 156), AND TABLE VOTES

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OF CONFIDENCE (SECTION 158). THE CONSTITUTION ALSO SAYS THAT THE ANNUAL BUDGET WILL BE CONSIDERED IN JOINT SESSION (SECTION 164).

7. THE HOUSE OF REPRESENTATIVES IS SIMILAR TO THAT DEFINED IN PREVIOUS THAI CONSTITUTIONS. THE DRAFT CALLS FOR A LOWER HOUSE OF BETWEEN 240 AND 300 MEMBERS (SECTION 108). THE YET TO BE PASSED ELECTION LAW APPARENTLY WILL DETERMINE THE PRECISE NUMBER. THE DRAFT CONSTITUTION STATES THAT REPRESENTATIVES WILL BE CHOSEN IN AT-LARGE ELECTIONS. IF A PROVINCE IS ENTITLED TO MORE THAN THREE REPRESENTATIVES, THEN THE PROVINCE ESTABLISHES EQUAL ELECTORAL DISTRICTS (SECTIONS 109 AND 110).

PROVISIONS FOR MEMBERS OF PARLIAMENT

8. IN AN ATTEMPT TO IMPROVE ON PAST THAI EXPERIENCE WITH IRRESPONSIBLE AND PURCHASABLE LEGISLATORS, THE NEW CONSTITUTION HAS A NUMBER OF PROVISIONS WHICH REGULATE THE BEHAVIOR AND STATUS OF THE INDIVIDUAL PARLIAMENTARIAN. THE NEW QUALIFICATIONS FOR PARLIAMENTARY CANDIDATES REQUIRE A MINIMUM AGE OF 23 AND MEMBERSHIP IN A POLITICAL PARTY. DISENFRANCHISEMENT PROVISIONS HAVE BEEN CHANGED SO THAT A BLIND PERSON CAN RUN FOR PARLIAMENT, BUT AN EMPLOYEE OF A STATE AGENCY OR ENTERPRISE CANNOT (SECTION 117). THE CDC HAS INCREASED THE CONDITIONS BY WHICH MEMBERSHIP IN THE LOWER HOUSE TERMINATES (SECTION 123). IF A PARLIAMENTARIAN RESIGNS FROM A POLITICAL PARTY OR HIS POLITICAL PARTY IS DISSOLVED, HIS NLA MEMBERSHIP CEASES. IF THE COURTS HAVE DISSOLVED HIS POLITICAL PARTY, HE HAS 60 DAYS IN WHICH TO BE ACCEPTED INTO ANOTHER PARTY. IF HE FAILS TO ATTEND ANY MEETINGS OF THE NLA WITHIN 90 DAYS, HIS MEMBERSHIP TERMINATES. THERE ARE NOW PROVISIONS FOR A MEMBER'S PARLIAMENTARY PEERS TO EXPEL HIM FOR DISHONORABLE BEHAVIOR. THE CONSTITUTIONAL TRIBUNAL HAS THE POWER TO DETERMINE WHETHER

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R 141015Z FEB 74

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A MEMBER HAS BROUGHT DISHONOR TO HIS CHAMBER. FIVE SENATORS OR MEMBERS OF THE HOUSE OF REPRESENTATIVES CAN COMPLAIN TO THE PRESIDENT OF EITHER HOUSE, ASSERTING THAT THE MEMBERSHIP OF A PEER HAS TERMINATED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 106 OR 123. SECTION 100 ALLOWS THAT 25 MEMBERS OF EITHER THE UPPER OR LOWER HOUSE MAY LODGE A COMPLAINT AGAINST ANOTHER MEMBER FOR ANY REASON, REQUESTING A DECISION FROM THE CONSTITUTIONAL TRIBUNAL.

CONSTITUTIONAL TRIBUNAL

9. THE 1949 CONSTITUTION ESTABLISHED A CONSTITUTIONAL CONFIDENTIAL

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TRIBUNAL AS A WATCHDOG OVER THE LEGISLATIVE PROCESS, BUT LEFT ITS DUTIES VAGUE. THE PRESENT DRAFT CONSTITUTION GIVES THE CONSTITUTIONAL TRIBUNAL INCREASED POWERS TO DETERMINE THE CONSTITUTIONALITY OF PARLIAMENTARY ACTION AND ACT AS A WATCHDOG OVER THE BEHAVIOR OF THE INDIVIDUAL PARLIAMENTARIANS. THE SIZE OF THE CONSTITUTIONAL TRIBUNAL IS THE SAME AS CALLED FOR IN THE 1949 DOCUMENT, BUT THE MEMBERSHIP IS ALTERED SO THAT THE NLA, COUNCIL OF MINISTERS, AND A JUDICIARY COMMITTEE EACH SELECT THREE MEMBERS. SECTION 209 PLACES BROAD RESTRICTIONS ON TRIBUNAL MEMBERSHIP IN THE INTEREST OF IMPARTIALITY. THE JUDICIARY COMMITTEE SELECTS THE TRIBUNAL CHAIRMAN. THE 1949 CONSTITUTION APPOINTED THE PRESIDENT OF THE SENATE IN THIS ROLE. SECTION 213 PROVIDES THAT ONE-FIFTH OF THE TOTAL MEMBERSHIP OF BOTH HOUSES CAN PETITION THAT A DRAFT BILL IS UNCONSTITUTIONAL AND SEEK TRIBUNAL DELIBERATION. WHILE THE TRIBUNAL IS CONSIDERING THE CONSTITUTIONALITY OF SUCH A BILL, THE BILL IS SUSPENDED FROM FURTHER CONSIDERATION. THE DRAFT CONSTITUTION GIVES THE TRIBUNAL THE POWER TO ACT UPON A JOINT OR SEPARATE PETITION OF ONE-FIFTH OF THE

MEMBERSHIP OF BOTH HOUSES THAT A CABINET OFFICIAL HAS VIOLATED THE CONSTITUTION. THE CONSTITUTIONAL TRIBUNAL THUS HAS THE POWER AFTER DELIBERATION TO REMOVE A CABINET

OFFICIAL. THE CABINET REMOVED THIS CLAUSE.

ELECTORS

10. THE DRAFT CONSTITUTION LOWERS THE VOTING AGE TO 18. IT ALSO PROVIDES THAT UNDER CERTAIN CIRCUMSTANCES DUAL CITIZENS OR NATURALIZED THAI CITIZENS MAY VOTE, THUS GIVING FIRST GENERATION CITIZENS THEIR FIRST CHANCE TO PARTICIPATE IN THE POLITICAL PROCESS.

NEW PROVISIONS

11. CHAPTER 9 OF THE DRAFT CONSTITUTION IS ENTIRELY NEW AND PERMITS THE ESTABLISHMENT OF A SERIES OF SPECIALIZED COURTS DEALING WITH LABOR, TAXATION, AND SOCIAL MATTERS. THIS IS AN ATTEMPT TO EXPAND THE JUDICIAL SYSTEM IN RECOGNITION OF NEW SOCIAL AND URBAN PROBLEMS. CHAPTER 10 IS AN ATTEMPT TO SPREAD THE DEMOCRATIZATION OF THAILAND AND ALLOWS FOR THE ELECTION OF LOCAL OFFICIALS. IT DOES NOT STIPULATE, HOWEVER, WHAT ADMINISTRATIVE ENTITIES ARE COVERED. IT IS HIGHLY UNLIKELY THAT THE NLA WILL RETAIN THIS CHAPTER CONSIDERING THE LARGE NUMBER OF ADMINISTRATIVE OFFICIALS IN THAT BODY. THERE IS ALSO AN UNNUMBERED CHAPTER WHICH ATTEMPTS TO INCREASE THE AUTHORITY OF THE NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT BOARD. THIS APPARENTLY IS AN ATTEMPT TO STRENGTHEN ECONOMIC PLANNING.

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CABINET CONSIDERATION

12. AFTER THE CDC HAS COMPLETED ITS WORK, THE DRAFT CONSTITUTION PROCEEDED TO THE CABINET. IN A 10 HOUR MEETING FEBRUARY 11, THE CABINET MADE FOUR BASIC CHANGES TO THE DRAFT. THE CABINET DISALLOWED THE PROVISION TO CHANGE THE LAW OF ROYAL SUCCESSION. THE DRAFT HAD BARRED ALL GOVERNMENT OFFICIALS EXCEPT UNIVERSITY LECTURERS FROM BECOMING PARLIAMENTARIANS. THE CABINET RETURNED THE UNIVERSITY LECTURERS TO THEIR STATUS AS GOVERNMENT OFFICIALS. SECTION 146, WHICH ALLOWED BOTH SENATORS AND REPRESENTATIVES TO INITIATE LEGISLATION, WAS CHANGED SO THAT THE PRIME MINISTER HAS TO GIVE PRIOR ENDORSEMENT TO ANY REVENUE BILLS. THE CABINET ALSO DELETED SECTION 216 GIVING THE CONSTITUTIONAL TRIBUNAL THE POWER TO IMPEACH MINISTERS. THE CABINET DID NOT MAKE ANY OTHER MAJOR CHANGES IN THE DRAFT EXCEPT TO REFINE THE WORDING. THE PRESS QUOTED THE PRIME MINISTER THAT THIS DRAFT WAS "THE BEST CONSTITUTIONAL DRAFT."

TUTION I'VE EVER SEEN."

PROMULGATION

13. SANYA, IN HIS FIRST PUBLIC ANNOUNCEMENT ON 15 OCTOBER 1973, PROMISED THE THAI PEOPLE A CONSTITUTION

WITHIN SIX MONTHS, WHICH WOULD BE 15 APRIL 1974. HE CHARGED THE CONSTITUTIONAL DRAFTING COMMITTEE (CDC) WITH CONFIDENTIAL

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COMPLETING ITS TASK IN THREE MONTHS, A DEADLINE THAT IT EXCEEDED BY ONLY A FEW DAYS. THE NATIONAL LEGISLATIVE ASSEMBLY THUS HAS TWO MONTHS TO DELIBERATE OVER THE DRAFT, AND MEET THE APRIL 15 DATE. PROMULGATION COULD TAKE PLACE IN MID TO LATE APRIL, FOLLOWED BY ELECTIONS WITHIN 90 DAYS. SANYA HAS TOLD US THAT HE WOULD LIKE TO VACATE HIS POSITION AS SOON AS POSSIBLE, AND THUS HAS ASKED NLA SPEAKER KUKRIT PRAMOJ TO EXPEDITE NLA CONSIDERATION OF THE DRAFT. SANYA RECENTLY TOLD THE DCM THAT HE HOPED ELECTIONS COULD BE HELD IN MAY, WHICH WOULD REQUIRE NLA APPROVAL BY LATE FEBRUARY OR EARLY MARCH. JUSTICE MINISTER PRAKORB HUTASINGH GAVE THE AMBASSADOR THE SAME TIMETABLE. KUKRIT, HOWEVER, SAYS THAT THERE IS ONLY A 50/50 CHANCE THAT THE NLA WILL SPEED ITS DELIBERATIONS. HE INDICATED TO US THAT ELECTIONS COULD SLIDE FORWARD TO AUGUST. SOME OBSERVERS BELIEVE THAT, BECAUSE OF THE RAINY SEASON'S DAMPENING OF VOTER TURNOUT, ELECTIONS COULD NOT TAKE PLACE UNTIL AFTER THE RAINS STOP IN THE FALL IF THEY CANNOT BE HELD BEFORE LATE JUNE.

14. THE SPEED OF NLA DELIBERATIONS WILL DEPEND IN PART ON THE DEGREE OF PUBLIC CRITICISM. A NUMBER OF CRITICS, IN AND OUT OF THE NLA, HAVE FOCUSED ON THE ROLE AND POWERS OF THE SENATE. A STANDARD CRITICISM IS THAT THE SELECTION OF THE SENATE IS UNDEMOCRATIC AND THE POWERS OF THE SENATE CONSTITUTE AN UNDEMOCRATIC CHECK ON THE LOWER HOUSE. "THE NATION" REPORTED FEBRUARY 11 THAT CHINTA BUNYAKOM, SUPREME COURT PRESIDENT, WROTE TO THE PRIME MINISTER EXPRESSING CONCERN OVER THE EXPANDED COURT SYSTEM THAT THE DRAFT CONSTITUTION ADVOCATES. THE JUDICIARY IN THAILAND PRIDES ITSELF ON ITS INDEPENDENCE AND ITS SUCCESSFUL FIGHT AGAINST NATIONAL EXECUTIVE COUNCIL (NEC) DECREE 299 IN DECEMBER 1982. THE PEOPLE FOR DEMOCRACY (PFD) WAS ONE OF THE FIRST GROUPS TO CRITICISE THE DRAFT. THE CABINET DELIBERATIONS FEBRUARY 11 HAVE ALREADY SATISFIED MOST OF THE PFD OBJECTIONS. DR. PUEY UNGPHAKORN HAD REPEATEDLY MADE THE IMPRACTICAL

SUGGESTION THAT THE DRAFT CONSTITUTION BE PUT BEFORE
THE PUBLIC IN A REFERENDUM. THERE APPEARS TO BE LITTLE
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CHANCE THAT THIS SUGGESTION WOULD BE ACCEPTABLE TO THE GOVERN-
MENT, AND PUEY'S REASONS FOR PRESSING HIS POINT ARE UN-
CLEAR.

CONCLUSIONS

15. THE DRAFT CONSTITUTION IS A UNIQUE INTERWEAVING OF
PROVISIONS FROM THE 1949 AND 1968 VERSIONS. THE RELA-
TIONSHIP OF THE KING TO THE CONSTITUTION IS VIRTUALLY
THE SAME EXCEPT FOR HIS NEW POWER TO CALL FOR A CON-
STITUTIONAL REFERENDUM. THE KING OBVIOUSLY WOULD
ONLY BE ABLE TO USE THAT POWER IF THERE WAS SIGNIFICANT
PUBLIC OUTCRY AND THE PARLIAMENT WAS SOMEHOW UNRESPON-
SIVE. THE MAJOR CHANGE OVER PREVIOUS DOCUMENTS IS AN
INCREASE IN THE POWER OF THE SENATE AND PROVISIONS TO
EXPEL ERRANT MEMBERS OF THE LOWER HOUSE. ASIDE FROM
THESE PROVISIONS, AND AN ATTEMPT TO COME TO GRIPS WITH
THE ECONOMIC AND SOCIAL CHANGES BUFFETING THAILAND,
THE NEW CONSTITUTION IS EXTREMELY CLOSE OF THE 1949
VERSION.

16. THE DOCUMENT EMERGES FROM A DIFFERENT SET OF
POLITICAL CIRCUMSTANCES THAN PREVIOUS THAI CONSTITUT-
TIONS. IT HAS NOT BEEN HANDED DOWN FROM ON HIGH.
IT DEVELOPED FROM A FREE INTERCHANGE AMONG A NUMBER OF
IMPORTANT GROUPS IN THE THAI POLITY. IT WAS NOT DE-
VISED TO LEGITIMIZE A GROUP ALREADY IN POWER, OR EASE
THE RULE OF THAT GROUP. IT WILL BE MORE DIFFICULT TO
TOSS ASIDE THAN ITS PREDECESSORS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSTITUTION, COMMITTEE MEETINGS, CONSTITUTIONAL AMENDMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 14 FEB 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BANGKO02540
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: n/a
From: BANGKOK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740234/aaaabfey.tel
Line Count: 423
Locator: TEXT ON-LINE
Office: ACTION EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 8
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: A. BANGKOK 18192 OF 21 NOVEMBER 1973
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 09 JUL 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09 JUL 2002 by boyleja>; APPROVED <13 JAN 2003 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CONCEPTS IN THE THAI DRAFT CONSTITUTION
TAGS: PGOV, TH
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005